Supreme Court, U.S.
FILED

(1)

96 283 JUL 29 1996.

OFFICE OF THE CLERK

NO.

In The

Supreme Court of the United States

OCTOBER TERM, 1995

MICHAEL J. DEE et al.,

Petitioners,

vs.

JANET RENO, ATTORNEY GENERAl of the United States, and ANDREW KETTERER, ATTORNEY GENERALof the State of Maine et al.,

Respondents.

On Petition For Writ Of Certiorari to the United States Court of Appeals for the First Circuit

---

PETITION FOR A WRIT CERTIORARI

MICHAEL J. DEE pro se
PO BOX 2021
WINDHAM, MAINE 04062
1-207-893-0287

22 pp

Questions

1.Did the United States District Court, District of Maine, abuse its discretion by declining to entertain a Declaratory Judgment action by Dee in a case where there is a lack of criminal prosecution against Dee?

2.Does the enforcement of the marijuana laws, which deprive citizens of their fundamental rights to privacy, to liberty and to property, which are protected by the 4th and 14th amendment of the U.S. Constitution and Article 1 secs. 1 & 5 of the Maine Constitution, a controversy of a justiciable nature, an issue to be resolved by the legislature?

3.Does the Government, which has demonstrated a lack of law enforcement interest, continue to have a compelling state interest to threaten and deprive citizens of these fundamental rights by coercive means, by prohibiting the private possession of marijuana by adults?

TABLE OF CONTENTS

	PAGE
Question	(i)
Table of Contents	(ii)
Table of Cited Authorities	(iii)
Citation of Judgments	1
Jurisdictional Statement	1
Constitutional provisions	1
Federal statutes	2
Maine statutes	2
United States Treaty	3
Court Rules	3
Statement of Case	3
Argument	5
A. The case law	6
B. Law Enforcement activity	7
Settlement of Controversy	10
Appendix A - Order of theUnited StatesCourt of Appeals for the First Circuit Petition for Rehearing Denied, Dated May 9,1996	1a
Appendix B - Memorandum Opinion of the United States Court of Appeals for the First Circuit Dated April 9, 1996.	2a
Appendix C - Judgment of the United States Court of Appeals for the First Circuit Dated April 9, 1996	3a
Appendix D - Memorandum and Order of the United States District Court for the District of Maine Dated September 11, 1995	4a
Appendix E - Judgment of the United States District Court for the District of Maine Dated September 11, 1995	7a

TABLE OF CITED AUTHORITIES

PAGE

Federal Procedures, Lawyers Edition, secs. 23:1-23:100 Lawyers Cooperative Publishing, N.Y. 1994.....5,6,8,9,10

Cases Cited:

Bowie v. Scopino, No. 93-317-P-H (D. Me. 1995)..... 8

National Org.. for Reform of Marijuana Laws v. Bell, 488 F.Supp. 123 (D.D.C.1980)..... 6

Penn. Bar Ass'n. v. Com., Pa. Cmwlth. 1992 607 A2d. 850..... 4

United States v Maas, 551 F. Supp. 645 (D.N.J. 1982);..... 6

Wilton v. Seven Falls Co., _U.S._ ,115 S. ct 2137, 132 L. Ed. 2d. 214(1995)..... 7

Zwicker v. Koota, D.C.N.Y. 1968 290 F. Supp 244 Reversed on grounds 89 S.Ct. 956, 394 U.S.103,22 L.Ed. 2d13(A-8,35,62)..... 8

CITATION OF JUDGMENTS

U.S. Court of Appeals For The First Circuit No.95-2173. U.S. District Court of Maine Civil 95-29 P-H

JURISDICTIONAL STATEMENT

United States Court of Appeals entered judgment against Dee on April 9, 1996. Petition for Rehearing was denied on May 9, 1996. The statutory provision on this Court jurisdiction to review on a writ of certiorari, the judgment in question is 28 U.S.C. sec. 1254 (I) and Rule 10 of the U.S. Supreme Court.

CONSTITUTIONAL PROVISIONS

ARTICLE 1 sec 1 Declaration of Rights, Maine Constitution " All men are created equally free and independent and have certain natural inherent and inaalienable rights among which are those of enjoying and defending life, liberty and acquiring, possessing and protecting property and pursuing, obtainingb safety and happiness."

ARTICLE 1 sec 5 of the Maine Constitution The people shall be secure in thier persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrent to any place or seize any person or thing, shall be issued without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause supported by oath or affirmation ."

4TH Amendment U.S. Constitution " The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath

or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." 14TH Amendment U.S. Constitution " No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person life, liberty or property without due process of law."

FEDERAL STATUTES

28U.S.C. sec. 1291 Final decision of District Court
28U.S.C. sec. 2201 Declaratory Judgment
28U.S.C. sec. 1331 Federal question
28U.S.C. sec. 1254(1), Court of appeals, certiorai; certified questions. Cases in the courts of appeals may be reviewed by the Supreme court by the following methods: (1)By writ of Certiorai granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Marijuana is subect to search and seizure. Penalties depend upon amount of marijuana . property and/or liberty are threaten and seized by these laws.

21U.S.C. sec 801-996 Food Drugs; Drug abuse Prevention
21 U.S.C. sec sec. 841(b) Penalties
(1), (A), (i) (1), (vii), (D)
(4)
21U.S.C. sec. 844
21U.S.C. sec. 844a
21U.S.C. sec. 846 Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment for the offense the commission of which was the object of the attempt or conspiracy.

MAINE STATE STATUTES

Maine 17- sec 1103

2A. marijuana 20ibs. or 500 plants class B crime 5 to 10 years>$5000 fine

B. >2lbs or 100 plants Class C crime 3-5 yrs. $1000 to $5000 fine

3A possession of >2lbs. presumed to be trafficking.

Maine 17-A sec. 1106

3Apossession of more than 1 1/4 Oz. presumed to be furnishing class D crime 1-3 yrs. $500 to $1000 fine

Maine 22 sec.2383 possession of < 1 1/4 Oz. civil offense $200-$400 fine.

UNITED STATES TREATY

18 U.S.T.PG.1407 Single Convention on Narcotic Drugs, 1961 Ratified 1967.

18 nU.S.T. Article 23 and 28.

RULES

Rule 10 of the U.S Supreme Court

STATEMENT OF CASE

Petitioner, Michael J. Dee filed for Declaratory Judgment action against Andrew Ketterer, Attorney General of the State of Maine, and Janet Reno, Attorney General of the United States on January 26, 1995.

Dee seeks to terminate a controversy with issues of law before the Constitutional Law Court in regards to undeclared rights.

Petitioner claims as a right to be secure in his person, home, papers and effects and seeks to be relieved from the uncertainty and insecurity arising from this controversy, deprivation of 4th and 14th

Amendment rights. There is a credible threat of enforcement of all marijuana laws. The merits of the case have not been heard. Why is marijuana illegal?

Subject matter jurisdiction existed in the United States District Court, District of Maine pursuant to 28 U.S.C.sec 1331, Federal Question. Michael J. Dee raised a federal constitutional question in the form of a request for Declaratory Judgment and Declaratory relief pursuant to 28 U.S.C. sec.2201.

This being a fundamental rights-compelling state interest case, Dee filed for summary judgment on July 24, 1995.Responses by the State of Maine and the United States did not show a compelling state interest to prohibit the private cultivation and private use of marijuana by adults and to prevent farmers from growing marijuana for industrial uses.

> The level of judicial review for entertaining Declaratory Judgment is "strict scrutiny" which requires that statute which restricts a fundamental right be justified by a compelling state interest and also be narrow drawn to express only legitimate state interest. Penn. Bar Ass'n. v. Com., Pa. Cmwlth.1992 607 A2d. 850.

Both the State of Maine and the United States, filed opposition to this motion, and, concurrently, filed motions for judgment on the pleadings. On September 11, 1995 the district court issued an Order on Pending Motions which granted judgment to both the State of Maine and the United States, and denied Dee's motion for summary judgment. Petition for rehearing was denied on October 16, 1995.

Dee filed a notice of appeal to the United States Court of Appeals For the First circuit on October 19, 1995, F.R.A.P. 4. Jurisdiction to review the judgment

exists pursuant to 28 U.S.C. sec. 1291. Appellate court affirm the judgment essentially for the reasons stated by the District Court

> "In light of the case law and given the fact that this is a Declaratory Judgment with no specific law enforcementactivity to assess, I conclude that declaratory relief is inappropriate." Judge D. Brock Hornby

I. ARGUMENT

> "The Federal Declaratory Act of June, 1934 provides that any court of the United States may declare rights, status and other legal relations of any interested party seeking such declaration only in cases involving an actual controversy where the issue is actual and adversary, Fed. Pro. L.Ed. at p.42,43 n.84. A controversy is justifiable only if it presents the plaintiff with a present danger or dilemma, Id. at p.44 n.98. A clear threat of application of a statute in the future is sufficient to establish the requisite case or controversy, Id. at p. 40 n 71, whether further relief is or could be sought."

Petitioner has a practical interest in the declaration sought, as a taxpayer paying for the "war on drugs" and also as a marijuana user. As stated by Judge Hornby, Appellant has made out a case or controversy within the meaning of the constitution.

> "Constitution requirement of personal stake has two prongs; one plaintiff has suffered an actual injury or threaten injury; two the litigant must demonstrate that the defendants conduct will cause the injury and that granting the relief requested likely would redress the

injury",Id. at p.34 n.28.

The Federal District Court has recognized both prongs.

A.THE CASE LAW

In the amended complaint Dee stated that the marijuana laws threatened fundamental rights and has agreed through the proceedings that possession of marijuana is not a fundamental right. (Amended complaint pg. 2)

The case law cited by the district court, United States v Maas, 551 F. Supp. 645 (D.N.J. 1982); National Org.. for Reform of Marijuana Laws v. Bell, 488 F.Supp. 123 (D.D.C.1980) were decided upon the rational basis test and the marijuana issue is best left for the legislature even though most all marijuana laws are criminal and have deprived citizens their liberty and property. These cases do not mention 4th Amendment rights that protects this liberty and property entitlements. Again, I am not presenting the issue that marijuana is a fundamental right. I am trying to show the constitutional law court that the marijuana laws are a threat to these fundamental rights with actual injury. Even though Judge Hornby stated;

> "The assertion in the pleadings, together with the marijuana, probably furnish a basis for at least the issuance of a search warrant."..... " For these reason , it would be disingenuous to deny that Dee is looking at actual or threatened injury in the form of criminal investigation/prosecution."

The lower court remains confused and insist that I am being redundant. Therefore, the court used

discretion to dismiss this declaratory judgment action. The District Court cited Wilton v. Seven Falls Co., _U.S._ ,115 S. ct 2137, 132 L. Ed. 2d. 214 (1995). This is not true.

B. LAW ENFORCEMENT ACTIVITY

In the order, Judge Hornby stated,

> " the defendants argue that Dee lacks standing to bring his lawsuit because he is not facing threatened or actual injury that is real and immediate. In response, Dee filed with the court a portion of a marijuana plant, presumably one that he has grown."

Judge Hornby writes in his opinion;

> "criminal prosecution against Dee may or may not be imminent, and the precise nature of any charges (possession, growing, trafficking, quantity, etc.) are impossible to determine. It is impossible to determine whether or when either federal or state authorities might press charges and what the nature of the resulting prosecution might be.In short, Dee may legitimately fear some kind of criminal law enforcement activity directed against him, it is impossible to determine whether or when federal or state authorities might press charges and what the nature of the resulting prosecution might be.It is, therefore, impossible to assess the constitutional issues." "This is a declaratory judgment action with no specific law enforcement activity to assess, I conclude that declaratory relief is inappropriate."

Judge Hornby did mention law enforcement

activity in his order;

"by virtue of the criminal cases that are prosecuted by this court and , most recently, a celebrated case in this court involving helicopter overflights searching for marijuana plants growing in Maine, *Bowie v. Scopino*, No. 93-317-P-H (D. Me. 1995), I am aware that federal and state authorities take marijuana growing and production seriously."

"Declaratory judgment action is designed precisely to give one potentially a defendant in a criminal prosecution access to a judicial determination prior to actual arrest when facts indicate a sufficient basis for his belief that conduct he deems protected under the constitution will subject him to such prosecution." *Zwicker v. Koota*, 8D.C.N.Y. 1968 290 F. SUPP. 244 Reversed on other grounds 89 S.Ct. 956, 394 U.S.103,22 L.Ed. 2d13. (Pg. 4 Motion for Summary Judgment; pg. 9 appellants brief to appellate court).

The U.S. Supreme Court has stated;

"It is not necessary that a party be arrested or prosecuted to be entitled to challenge the constitutionality of the statutes. However the threat of prosecution must be real and immediate; as long as the statutes are on the books and compliance there with being coerced by the threat of enforcement, the controversy as to validity of the Acts are both immediate and real", *Fed. Pro. L.Ed* 1994 p. 43 n. 88. "As the statutes are on the books and government prosecutors are acting

sporadically to enforce the laws, the threat of prosecution is real and therefore there could be no lack of fear of criminal prosecution for engaging in such conduct", Id. at p.36 n.40.

Congress intended declaratory relief to be utilized to test the constitutionality of criminal statutes, to determine any question of construction or validity, Id. at p.36 n. 45. The main purpose is to settle controversies before they ripen into violations of laws or breaches of duty, Id. at p. 19 n. 19. Citizens were no longer left with the option either to violate the law and take their chances in testing the constitutionality in a criminal prosecution, or else to forgo, in fear of prosecution the exercise of claimed rights or constitutionally protected conduct" ,Id. at p.12 n. 41.

Declaratory relief will be effective in settling the controversy. It is

"appropriate when judgment will serve a useful purpose in clarifying and settling the legal relation in issue and when it will terminate and afford relief form uncertainty, insecurity and controversy giving rise to the proceeding", Id. at p.42 n.78.

Marijuana is no longer subject to search and seizure. It's improper use is, such as use in a public place or motorized vehicle or furnishing to minors.

"A useful purpose may be served if it relieves a party from acting at his or her peril while uncertain of his or her legal rights because another party has yet to bring a course of action", Id. at p.42 n.79. "The controversy can be settled in its entirety and with expediency

and economy", Id. at p.9 n. 20. "The relief sought will terminate the controversy giving rise to the proceedings", Id. at p. 15 n.70.

There are some limitation on the District Court to refuse to entertain action for declaratory relief.

"Such discretion should not be exercised against entertainment of controversies that are justiciable and actual, Id at p.16 n.78 or in the public interest be resolved, Id at p.16 n.79.

This is an issue of public importance because it concerns the fundamental rights of its citizens and the use of police power. It is of public importance for the court to balance the interest of the state with citizens constitutional rights.It is in this courts interest to maintain credibility with public opinion, particularly with future generations.

"Declaratory Judgment Act was not intended to refuse to entertain Declaration of Rights not all ready determine", Id. at p.10 n. 29 or "to prevent the cost of litigating where such violations or disturbance have already occurred," Id. at p.11 n. 34. "The discretion to grant or refuse declaratory relief should be liberally exercised to effectuate the purposes of the statute and afford relief from uncertainty and insecurity with respects to rights, status and other legal relations", Id. at p.16 n. 80. "No wrong need have been committed or loss have occurred to sustain this action", Id. at p38 n. 57. "It enables parties uncertain of their legal rights to seek declaration of rights prior to injury."

SETTLEMENT OF CONTROVERSY

"A petition for a writ of certiorari will be granted

only for compelling reasons."

The United State Court of Appeals for the first circuit has entered a decision in a conflict.....that has

> "departed from accepted and usual course of judicial proceeding and has sanctioned such a departure by a lower court to call for an exercise of this court's supervisory power." Rule 10(a) .

The lower courts have avoided an important constitutional question that has not been settled by this court. They have decided the purpose of an important federal law, Declaratory Judgment Act, in a way that conflicts with relevant decision of this Court.

The District Court dismissed a declaratory judgment even when an actual controversy exist. This declaratory judgment proceeding involves undeclared rights and justifies docketing the case for early hearing.

The lower court is confused, divergent if not rebellious. It is an area of the law and public importance badly in need of the Supreme Courts authoritative voice because other declaratory judgment action will be sought time and again.There would be a national impact if the lower Courts decision stands, that one has to be, not only arrested but, prosecuted to question the constitutionality of any law or regulation that is a threat to fundamental rights.

The Governments have not changed a challenge policy. Concrete interest in the controversy has not terminated. Dee can show that he will continue to be subject to arrest and prosecution and to suffer actual injury; that other persons may litigate a similar

claim.The decision of the courts below created an intolerable conflict with the U.S. Supreme Court over a legal right to declaratory judgment.

Summary reversal is considered appropriate only when the decision below is plainly wrong . The lower court made a procedural and technical errors that has been demonstrated unequivocally. The lower court applied Supreme court doctrine in a preposterous fashion.

The record contains no indication the District Court considered the criteria that declaratory action will settle the controversy and serve a useful purpose in clarifying the legal relations in issue Id. at p.17 n. 85. Declaratory Judgment relief should be granted where the request is for the ultimate determination of rights, Id. at p.40 n. 67.

Dated August 15 1996

Submitted by

Michael J. Dee
PO Box 2021
Windham, Me. 04062

Appendix A - Order of theUnited States Court of Appeals for the First Circuit, Petition for Rehearing denied, Dated May 9, 1996

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO.95-2173

MICHAEL J. DEE et al
PLAINTIFF - APPELLANT

v.

JANET RENO, Attorney General and
ANDREW KETTERER, Attorney General of the State of Maine et al

Before:
Selya, Cyr & Lynch, Circuit Judges.

ORDER OF THE COURT
Entered: MAY 9, 1996

Upon consideration of the appellant's "Petition for Rehearing", It is ordered that said petition for rehearing is Hereby denied.

By The Court
WILLIAM H. NG, Clerk

APPENDIX B- MEMORANDOM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED APRIIL 9, 1996.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO.95-2173

MICHAEL J. DEE et al

APPELLANT

v.

JANET RENO, Attorney General and
ANDREW KETTERER, Attorney General of the State of Maine et al

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE
[Hon. D. Brock Hornby, U.S. District judge]

Before:
Selya, Cyr & Lynch, Circuit Judges.

Michael J. Dee on brief pro se.

Jay p. McCloskey, U.S. Attorney, and Evan J. Roth, Asst. U.S. Attorney on brief for appellee, Attorney General Reno.

Andrew Ketterer, Attorney General, James D. Williams III, Asst. Attorney General, and Thomas D. Warren, Chief, Litigation Division, Asst. Attorney

General, on brief for appellee, Andrew Ketterer.

APRIL 9, 1996

Per Curiam. Plaintiff / appellant Michael J. Dee challenges a district court discretionary decision not to entertain a declaratory judgment action. We have reviewed the parties' briefs and the record on appeal and affirm the judgment essentially for the reasons stated by the district court in its order.

APPENDIX C- JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED APRIL 9, 1996.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO.95-2173

MICHAEL J. DEE et al
PLAINTIFF - APPELLANT

v.

JANET RENO, Attorney General and
ANDREW KETTERER, Attorney General of the State of Maine et al, Defendants, Appellees

JUDGMENT
Entered April 9, 1996

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Maine.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: **The judgment of the district court is affirmed.**

By The Court
WILLIAM. NG
Clerk

dated September 11, 1995.
Affirmed.

APPENDIX D- MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE DATED SEPTEMBER 11,1995.

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Civil No. 95-29-P-H
MICHAEL J. DEE
PLAINTIFF
V.
JANET RENO, Attorney General of the United States, et al.,
DEFENDANTS

ORDER ON PENDING MOTIONS

The plaintiff Michael J. Dee has sued the Attorneys General of the United States and the State of Maine seeking a declaratory judgment that federal and state marijuana laws are unconstitutional. the defendants have moved for judgment on the

pleadings and the plaintiff has moved for summary judgment . I conclude that Dee is not entitled to the relief he seeks and direct that judgment be entered for the defendants.

The defendants argue that Dee lacks standing to bring his lawsuit because he is not facing threatened or actual injury that is real and immediate. In response, Dee filed with the court a portion of a marijuana plant, presumably one that he has grown. The assertion in the pleadings, together with the marijuana, probably furnish a basis for at least the issuance of a search warrant. Moreover,by virtue of the criminal cases that are prosecuted by this court and , most recently, a celebrated case in this court involving helicopter overflights searching for marijuana plants growing in Maine, Bowie v. Scopino, No. 93-317-P-H (D. Me. 1995), I am aware that federal and state authorities take marijuana growing and production seriously.For these reason , it would be disingenuous to deny that Dee is looking at actual or threatened injury in the form of criminal investigation/prosecution. On the other hand, it is also the case that law enforcement resources are limited and that priorities determine where enforcement activities should be directed. Thus criminal prosecution against Dee may or may not be imminent, and the precise nature of any charges (possession, growing, trafficking, quantity, etc.) are impossible to determine. It is impossible to determine whether or when either federal or state authorities might press charges and what the nature of the resulting prosecution might be.In short, Dee may legitimately fear some kind of criminal law enforcement activity directed against him, it is impossible to determine whether or when federal or

state authorities might press charges and what the nature of the resulting prosecution might be.It is, therefore, impossible to assess the constitutional issues.

Declaratory judgment is a discretionary remedy, see Wilton v. Seven Falls Co., _U.S._ ,115 S. ct 2137, 132 L. Ed. 2d. 214(1995). It is particularly in appropriate here. Generally speaking, federal and state marijuana laws have been described as raising matters of legislative policy for elected representatives to determine, See erg., United States v Maas, 551 F. Supp.645 (D.N.J. 1982) National Org.. for Reform of Marijuana Laws v. Bell, 488 F.Supp. 123 (D.D.C.1980). In light of the case law and given the fact that this is a declaratory Judgment with no specific law enforcement activity to assess, I conclude that declaratory relief is inappropriate. I GRANT judgment on the pleadings to the defendants and DENY summary judgment to the plaintiff.

SO ORDERED.

Dated at Portland, Maine this 11 day of September, 1995.

"s/ D.Brock Hornby"
United States District Judge

APPENDIX E- JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE DATED SEPTEMBER 11, 1995

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Civil No. 95-29-P-H
MICHAEL J. DEE
PLAINTIFF
V.
JANET RENO, Attorney General of the United States, et al.,
DEFENDANTS

JUDGMENT

In accordance with the Order on Pending Motion issued on September 11, 1995 by D. Brock Hornby, USDJ,

Judgment is hereby entered for the defendant's against the plaintiff.

WILLIAM S. BROWNELL, CLERK

BY "s/Lisa R. Witham"
Deputy Clerk

Dated at Portland, Maine, this 11th day of September, 1995.